

ESTTA Tracking number: **ESTTA170404**Filing date: **10/23/2007**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	NKOTB, Inc.
Granted to Date of previous extension	10/24/2007
Address	c/o Cortina Business Management P.O. Box 610287 Newton, MA 02461 UNITED STATES
Attorney information	Peter D. Rosenthal, Esq. Roberts & Ritholz, LLP 183 Madison Ave., PH New York, NY 10016 UNITED STATES prosenthal@robritlegal.com Phone:(212) 448-1800

Applicant Information

Application No	78697224	Publication date	06/26/2007
Opposition Filing Date	10/23/2007	Opposition Period Ends	10/24/2007
Applicant	SM Productions Suite 226 111 East 14th Street New York, NY 10003 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 1988/01/01 First Use In Commerce: 1989/10/01 All goods and services in the class are opposed, namely: Series of musical sound recordings
Class 041. First Use: 1988/01/01 First Use In Commerce: 1989/10/01 All goods and services in the class are opposed, namely: Entertainment in the nature of on-going television programs in the field of music and variety; Entertainment services, namely, providing a television program in the field of music and variety via a global computer network; Entertainment, namely live performances by musical bands

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	78703704	Application Date	08/30/2005
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NEW KIDS ON THE BLOCK		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 1986/06/06 First Use In Commerce: 1986/06/06 Series of audio recordings featuring the performances of a musical group; Decorative magnets; Decorative refrigerator magnets; Downloadable musical sound recordings; Downloadable ring tones, graphics and music via a global computer network and wireless devices; Downloadable video recordings featuring the performances of a musical group; a series of musical sound recordings; a series of musical video recordings; a series of pre-recorded CD's, video tapes, laser disks and DVD's featuring the performances of a musical group; a series of video recordings featuring the performances of a musical group; a series of visual recordings and audio visual recordings featuring music and animation</p> <p>Class 016. First use: Albums for stickers; Albums for photographs and memorabilia; Appointment books; Autograph books; Ball-point pens; Banners of paper; Binders; Blank cards; Blank note cards; Blank or partially printed postcards; Bookmarks; Books in the field of biography and autobiography related to a musical group; Brag books; Bumper stickers; Calendars; Cards, namely, greeting cards and note cards; Coasters made of paper; Coloring books; Comic books; Composition books; Date books; Day planners; Decals; Diaries; Envelopes; Events programmes; Folders; Gift wrap paper; Graphic novels; Memory books ; Musical greeting cards; Note books; Note cards; Note pads; Paper stationery; Paperweights; Pen and pencil cases and boxes; Pens; Postcards; Posters; Scrapbooks; Souvenir programs concerning performances of a musical group; Stationery; Stickers; Temporary tattoos; Three-ring binders; Trading cards</p> <p>Class 025. First use: Clothing, namely Bandanas; Baseball caps; Belts; Caps; Footwear; Hats; Jackets; Jeans; Jerseys; Men's and women's jackets, coats, trousers, vests; Neckwear; Nightwear; Pajamas; Panties, shorts and briefs; Pants; Shirts; Shoes; Short-sleeved or long-sleeved t-shirts; Singlets; Sneakers; Socks and stockings; Sweat bands; Tank tops; Undergarments; Wrist bands</p> <p>Class 041. First use: Entertainment namely, live performances by a musical band; Entertainment services namely live, televised and movie appearances by a professional entertainer; Entertainment services, namely, personal appearances by a musical group; Entertainment services, namely, providing a web site featuring musical performances, musical videos, related film clips, photographs, and other multimedia materials; Entertainment services, namely, providing prerecorded music, information in the field of music, and commentary and articles about music, all on-line via a global computer network; Entertainment, namely a continuing reality-based show broadcast over television, satellite, audio, and video media; Entertainment, namely live music concerts; Fan clubs</p>		

Attachments	78703704#TMSN.jpeg (1 page)(bytes)
-------------	--

	Notice of Opposition.pdf (20 pages)(507021 bytes)
Signature	/Peter D. Rosenthal/
Name	Peter D. Rosenthal, Esq.
Date	10/23/2007

In the matter of trademark application Serial No. 78/697224
For the Mark NEW KIDS ON THE BLOCK
Published in the Official Gazette on June 26, 2007

Opposition No. _____

Opponent owns exclusive rights in and to the Mark with regard to the goods and services claimed in the Application.

1. More than twenty years ago, the individuals Donnie Wahlberg, Joey McIntyre, Danny Wood, Jordan Knight, and Jonathan Knight (collectively the “Group”) began recording, performing, promoting and otherwise commercially exploiting their musical performances and recordings in the United States and worldwide using the Mark. The Group’s record sales under the Mark are in the tens of millions, its concerts have been performed under the Mark in front of hundreds of thousands of fans in the United States and worldwide, and television appearances expanded the fame and name recognition of the Group and the Mark to millions around the globe.

2. Through extensive use and publicity over many years, including continued use in connection with the sale of records and merchandise, the Mark has always been and still remains uniquely identified with the Group by the general public in the United States and worldwide in connection with the goods and services claimed in the Application.

3. Big Step Productions, Inc. (“Big Step”), Opponent’s predecessor-in-interest and the entity formerly entitled to the Group’s exclusive recording and other entertainment-related services, previously owned USPTO registrations covering the Mark and the stylized NEW KIDS ON THE BLOCK logo in a wide range of goods and services, including registration Serial Nos. 74181006; 74063817; 74063572; 74062220; 74061436; 74061298; 74061297; 74061225; 74060998; 74060997; 74060942; 74060941; 74060899; 74060855; 74060854; 74060850; 74060849; 74060715; 74060714; 74060709; 74060707; 74057292; 74052241; 74051879; 74051619; 74048455; 74048363; 74048353; 74047977; and 74047976.

4. Pursuant to a written agreement dated as of April 1, 1992, Big Step assigned to the Group “any and all right, title and interest Big Step may have in and to the name and logo “New Kids On The Block” (including all derivatives, initials and usages associated with the name) as well as all trademarks, servicemarks and application [sic] and registrations.”

5. Opponent is the Group’s current corporate operating entity, with exclusive rights in and to all the Group’s intellectual property rights, including but not limited to the Mark.

6. As a result of the Group's and Opponent's considerable investment of energy, time and money, the Mark has become famous, acquired substantial goodwill and become an extremely valuable proprietary right of the Opponent.

7. The extensive use and promotion of the Mark by Opponent and its predecessors-in-interest have resulted in its achieving secondary meaning and great popularity with the public in the United States and worldwide.

8. On August 30, 2005, Opponent filed USPTO application Serial No. 78/703704 with regard to actual use of the Mark in Class 009 (citing a date of first use and first use in commerce of June 6, 1986) and on a bona fide intent-to-use basis with regard to Classes 016, 025, and 041. A Notice of Allowance was issued by the USPTO regarding Opponent's application on December 5, 2006, but further action on such application has been suspended pursuant to a Notice of Suspension issued as of January 17, 2007 in light of the post-abandonment reinstatement of the instant Application, which preceded Opponent's application by eight (8) days.

9. On August 30, 2005 Opponent also filed USPTO application Serial No. 78/7073750 with regard to the Opponent's bona fide intent to use the mark "NKOTB" in Classes 016, 25 and 041. "NKOTB" of course reflects the commonly used initials for the Group's moniker, NEW KIDS ON THE BLOCK. A Notice of Allowance issued with regard to such application on August 8, 2006.

10. Opponent has not authorized, expressly or implicitly, the Applicant's use of the Mark or Applicant's filing of the Application.

11. Opponent's undersigned attorneys have communicated numerous times with Applicant's attorney of record, Brett H. Green, Esq., advising of Opponent's exclusive rights in and to the Mark and insisting that Applicant withdraw the Application and cease and desist from any and all use thereof. A copy of counsel's May 1, 2007 correspondence to Mr. Green is attached as Exhibit A.

Applicant has no rights in or to the Mark.

12. Upon information and belief, Applicant's sole claim of any rights to the Mark derive from the fact that one of its partners, the now-deceased Richard "Dick" Scott, was previously a shareholder of Big Step, Opponent's predecessor-in-interest. A copy of Applicant's October 7, 2005 Preliminary Amendment to the Application (the "Applicant's Preliminary Amendment"), in which Mr. Scott acknowledges Big Step's valid assignment of the Mark to the Group as Opponent's predecessor-in-interest, is attached hereto as Exhibit B.

13. Applicant further acknowledged its lack of rights to the Mark in correspondence to the undersigned attorneys for Opponent. A copy of a fax from Mr. Scott dated September 12, 2005, in which he states with regard to the Application that "he picked it up to try and save it from unscrupulous hands," is attached hereto as Exhibit C.

The Application constitutes fraud on the USPTO.

14. The Application states, under penalty of perjury, that Applicant has been actually and continuously using the Mark since 1988, and in commerce since 1989, in connection with a "series of musical sound recordings," with "on-going television programs" (both broadcast and via the Internet) and in connection with "live performances by musical bands."

15. Contrarily, the Applicant's Preliminary Amendment states under penalty of perjury that, "Earlier this year, the applicant, SM Productions began using the mark in commerce in television and phonorecords."

16. Upon information and belief, there currently exist no television programs bearing the Mark, nor live performances by musical bands using the Mark, and neither Applicant nor any predecessor-in-interest of Applicant has made any actual and/or continuous use of the Mark, in commerce or otherwise, in connection with any of the goods or services claimed in the Application.

17. On March 28, 2007, Applicant responded to an Office Action requesting new specimens to support the Applicant's use of the Mark by submitting the cover art of the Group's 1988 album "Hangin' Tough" and of the Group's 1999 album "Greatest Hits" (the "Class 009 Specimens").

18. The Class 009 Specimens depict recordings featuring the Group's performances, names and likenesses as released by Columbia Records, and do not evidence actual use of the Mark by Applicant.

19. Upon information and belief, Applicant has no right, title or interest in or other association with or to the albums depicted in the Class 009 Specimens, nor the Group's performances embodied thereon, nor to income therefrom, and such Class 009 Specimens knowingly and fraudulently misidentify Applicant as the source of such goods.

20. In support of its claim of "actual use" of the Mark in connection with "live performances by musical bands," Applicant submitted as a specimen a "concert poster" purporting to advertise an undated concert by the Group "Live this Friday night 10:00 PM at the Paramount," and containing a poorly photocopied version of the Group's logo (the "Class 041 Specimen"). A copy of the Class 041 Specimen is attached hereto as Exhibit D.

21. Upon information and belief, the "concert poster" submitted as the Class 041 Specimen is fraudulent and does not evidence "actual use" of the Mark by Applicant, as it does not advertise an actual live performance of any musical group, and certainly not one of the Group itself, which has not engaged in live musical performances since the early 1990s and whose live performances were subject to promotional budgets of tens of thousands of Dollars and whose concert posters and other promotional materials were infinitely more detailed and professionally designed and printed than the Class 041 Specimen.

22. Upon information and belief, the Applicant in submitting the Class 041 Specimen knowingly and fraudulently misidentified itself as the source of a live performance by the Group or some other musical band using the Mark.

**Opponent will be damaged by the registration of the Mark by Applicant
within the meaning of 15 U.S.C. § 1063(a).**

23. Opponent will be damaged by registration of the Mark by Applicant because Applicant's unauthorized actions violate the Applicant's exclusive rights to the Mark.

24. Opponent will be damaged by registration of the Mark by Applicant because registration and use of the Mark by Applicant will cause a likelihood of confusion among the general public as to the content and origin of goods and services bearing the Mark.

25. Opponent will be damaged by registration of the Mark by Applicant because registration and use of the Mark by Applicant constitutes a false designation of origin with regard to the Group's recordings and performances.

26. Opponent will be damaged by registration of the Mark by Applicant because registration and use of the Mark by Applicant will impede Opponent's ability to register the Mark itself and to continue engaging in licensing activities and other exploitation of Opponent's exclusive common law and other rights in and to the Mark in connection with a variety of goods and services, including but not limited to those claimed in the Application.

27. Opponent will be damaged by registration of the Mark by Applicant because registration and use of the Mark by Applicant dilutes the distinctive quality and value of the Mark by lessening its capacity to identify and distinguish goods and services actually associated with Opponent and the Group.

28. Opponent will be damaged by registration of the Mark by Applicant because registration and use of the Mark by Applicant will tarnish the Mark and Opponent's and the Group's reputation by depriving Opponent of the ability to control the quality of the goods and services with which the Mark is associated.

29. Opponent will be damaged by registration of the Mark by Applicant because registration and use of the Mark by Applicant violates and diminishes the ability of the Group and Opponent to effectively exploit the Group's rights of publicity.

30. Opponent will be damaged by registration of the Mark by Applicant because registration and use of the Mark by Applicant constitutes unfair competition and deceptive business practices.

PRAYER FOR RELIEF

WHEREFORE, Opponent requests that the registration sought by Applicant be refused, that the Notice of Opposition be sustained and that the Trademark Trial and Appeal Board grant such other relief as it deems just and proper.

Dated: New York, New York
October 23, 2007

ROBERTS & RITHOLZ, LLP

By: 

Peter D. Rosenthal

Attorneys for NKOTB, Inc.
183 Madison Avenue, Penthouse
New York, New York 10016
Tel: (212) 448-1800

EXHIBIT A

ROBERTS & RITHOLZ LLP
ATTORNEYS AT LAW

ANDREW BERGMAN
MATTHEW L. HECKMAN*
JEFFREY A. LEVY*
ADAM E. RITHOLZ
JAIMISON M. ROBERTS
PETER D. ROSENTHAL
JEFF SANDERS

OF COUNSEL
JUSTIN E. ARCANGEL
DAVID M. EHRLICH*

183 MADISON AVENUE
PENTHOUSE
NEW YORK, NY 10016
TELEPHONE: (212) 448-1800
FACSIMILE: (212) 448-0020
www.robritlaw.com

*ALSO ADMITTED IN CA
*ALSO ADMITTED IN CT

May 1, 2007

VIA FAX (845.818.5388),
EMAIL (brettgreen@verizon.net)
AND CERTIFIED MAIL (R.R.R.)

Brett H. Green, Esq.
500 Strawtown Road
West Nyack, NY 10994

Re: Infringement of "NEW KIDS ON THE BLOCK" Trademark
and Violation of Rights of Publicity

Dear Brett:

As you know from our past phone calls and correspondence, we are counsel to the world-renowned recording group NEW KIDS ON THE BLOCK and to NKOTB, Inc. (collectively, the "Group"). As previously asserted and as discussed more thoroughly below, the Group's trademark rights are being infringed and diluted by your client SM Productions' ("SMP") improper, unauthorized and misleading use of and claim of ownership with regard to the NEW KIDS ON THE BLOCK mark (the "Mark"), including, without limitation, as the subject of trademark application Serial No. 78/697224 filed with the U.S. Patent and Trademark Office (PTO) (the "Infringing Application"). Furthermore, your client's alleged use of the Mark violates our clients' rights of publicity and has and/or will create confusion among the millions of persons worldwide who associate the Mark uniquely with the Group's members.

The Group and we had hoped to resolve this matter amicably. Based on the dialogue you and I had previously established; our sending you a copy of the April 1, 1992 agreement between Big Step Productions, Inc. ("Big Step") and the Group; the PTO's initial rejection of the Infringing Application; and Dick Scott's passing, we assumed you had advised your client that it had no rights with regard to the Mark. Unfortunately, we have learned that SMP recently responded the PTO's Office Action, fraudulently reasserting its claim of actual and continuous use of the Mark dating back to 1988.

On the Group's behalf, we therefore demand that SMP: (i) immediately withdraw the Infringing Application, (ii) immediately cease and desist from any and all

use of the Mark, and (iii) render a detailed accounting of all uses of the Mark and all associated revenue within ten (10) days from the date of this letter.

By way of background, more than twenty years ago, the Group began recording, performing and promoting its music worldwide. The Group's record sales exceed fifty million, its concerts were performed in front of hundreds of thousands of fans, and television appearances expanded its' members fame and name recognition to millions around the globe. Through extensive use and publicity over those many years, including continued use in connection with the sale of records and merchandise, the Mark has always been and still remains instantaneously and uniquely identified with the Group by the general public worldwide. As a result of the Group's considerable investment of energy, time and money, the Mark has become famous, acquired substantial goodwill and become a proprietary right of extraordinary value. Consequently, the Group has the exclusive right to use the Mark in connection with a variety of goods and services, including without limitation those named in the Infringing Application.

Your client's claims of ownership of or association with the Mark as Big Step's successor-in-interest are wholly without merit. In SMP's October 7, 2005 Preliminary Amendment in support of the Infringing Application, the late Mr. Scott attested under penalty of perjury that in 1989 he and Maurice Starr assigned any and all of their initial interest in the Mark to Big Step, which in turn assigned the Mark to the Group in the 1992 agreement, a copy of which we provided to you. Consequently, any rights the partners or predecessors-in-interest of SMP may have had to the Mark were thus assigned to the Group, leaving them no rights whatsoever. In correspondence with this office, Mr. Scott stated that he was *"totally shocked to learn that the New Kids Trademark and Registration [sic] had been abandoned. I picked it up to try and save it from unscrupulous hands."* The Group's common law and contractual rights to the Mark of course remain intact notwithstanding the subsequent expiration of the PTO registration covering the same. As a result, SMP's attempted registration is not only infringement but also a breach of Big Step's 1992 agreement. The only "unscrupulous hands" here are those of your client.

Moreover, the Infringing Application is rife with falsehoods that may well amount to fraud on the PTO and the American public. For example, SMP alleges that it has been actually and continuously using the Mark since 1988, and in commerce since 1989, in connection with musical sound recordings, "on-going" television programs (both broadcast and via the Internet) and in connection with live performances by musical bands. That claim is patently false, and we hereby demand that you identify such purported SMP-produced sound recordings, television programs, Internet webcasts and live performances by musical artists, whether allegedly involving the performances of the Group's members or otherwise. Any such uses are willful and knowing violation of the Group's trademark rights and rights of publicity and we hereby further demand that SMP cease and desist any and all such uses.

Indeed, the so-called specimens of "actual use" submitted with the Infringing Application are specious at best and have no apparent connection to SMP. The

specimens purporting to show SMP's use of the Mark in connection with sound recordings are photocopied album covers of the Group's "Hangin' Tough" and "Greatest Hits" albums. Both albums feature the performances of the Group's members and were released and are currently distributed by Columbia Records, a subsidiary of Sony Music Entertainment, Inc. The slapdash "concert poster" purporting to advertise an undated concert by the Group at an undisclosed location ("Live this Friday night, 10:00 PM at the Paramount) is laughably unbelievable in its production value, ambiguity, and connection to either your client or ours, and appears to have been cobbled together on a photocopy machine. We urge you and your client to be mindful that willful false statements in PTO filings are punishable by fine and/or imprisonment, and that if SMP does not withdraw the Infringing Application, the Group reserves its rights to expose these matters before the Trademark Trial and Appeal Board and any applicable courts.

SMP's unauthorized actions not only violate the Group's exclusive rights to the Mark and cause confusion among the general public as to the content and origin of goods and services bearing the Mark, but also (i) constitute false designation of origin; (ii) impede the Group's ability to register the Mark itself and engage in licensing activity; (iii) serve to dilute the distinctive quality and value of the Mark by lessening its capacity to identify and distinguish goods and services actually associated with the Group; (iv) tarnish the Group's reputation by depriving it of the ability to control the quality of the goods and services with which the Mark is associated; (v) violate and diminish the Group's ability to effectively exploit its rights of publicity; and (vi) constitute unfair competition and deceptive business practices.

The Group must act vigilantly to protect its rights and interests. On its behalf, we therefore demand that SMP immediately withdraw the Infringing Application, cease and desist from any and all use of the Mark or any confusingly similar representations (whether in standard characters or any stylized form) and render a detailed accounting of all uses of the Mark within ten (10) days of this letter. In addition, we demand that SMP immediately turn over to the Group, or destroy, any and all quantities of materials bearing the Mark.

Our clients and we shall appreciate your prompt written confirmation that SMP has complied with the preceding paragraph. The Group considers SMP's actions to be serious, knowing and willful infringements that have already caused irreparable confusion and harm and may require other appropriate action to protect its interests. Therefore, if unsatisfied with your and/or SMP's response, the Group reserves its rights to pursue the full range of legal remedies available, including without limitation opposing registration of the Mark upon publication, equitable relief in the form of one or more injunctions and seeking monetary and other appropriate relief that may include attorneys' fees and up to treble damages under the Lanham Act, and for violation applicable state statutes and common laws involving their right of publicity. Our clients also reserve the right to explore the availability of sanctions in connection with your continued prosecution of the Infringing Application in light, and in spite, of the facts.

The foregoing is without prejudice and not intended to be a complete statement of the facts or of the law relevant to this matter, nor of the Group's legal and equitable rights and remedies, and nothing hereinabove stated or omitted shall be deemed a waiver or limitation of any right, remedy or cause of action of any kind whatsoever, all of which are hereby expressly reserved to our clients.

Our clients and we shall expect your prompt written response to this letter.

Sincerely

A handwritten signature in black ink, appearing to read "Peter D. Rosenthal", with a long horizontal flourish extending to the right.

Peter D. Rosenthal

PDR/tmc

cc: NKTOB, Inc.
Mr. Jonathan Knight
Mr. Jordan Knight
Mr. Joe McIntyre
Mr. Donnie Wahlberg
Mr. Danny Wood
Jaimison M. Roberts, Esq.

EXHIBIT B

Preliminary Amendment

The table below presents the data as entered.

SERIAL NUMBER	78697224
MARK SECTION (no change)	
GOODS AND/OR SERVICES SECTION (1st class)(no change)	
GOODS AND/OR SERVICES SECTION (2nd class)(no change)	
ADDITIONAL STATEMENTS SECTION	
MISCELLANEOUS STATEMENT	<p>My name is Richard Scott, and I am a partner in SM Productions, the applicant herein. I am making this additional statement in support of SM Production's application for the New Kids on the Block Trademark. In late 1987, Maurice Starr and I developed the concept and name "New Kids On The Block". We began to use the mark in commerce for a musical group (the "Group"); our first use in commerce was on or around January 1, 1988. In 1989, we assigned the ownership of the mark to our corporation, Big Step Productions, Inc. Big Step Productions, Inc. used the mark in commerce for several years, in many fields, including but not limited to, entertainment services, records, and clothing. Big Step Productions, Inc. entered into several licenses for the use of the "New Kids On The Block" mark; some of these licenses are still in effect. On or around April 1, 1992, Big Step Productions, Inc. assigned ownership of the mark to the members of the Group. The Group never registered such assignment with the Patent and Trademark Office (indeed the last registrant was Big Step Productions, Inc). The Group eventually stopped performing and providing services; all of the trademark registrations lapsed. There has been no trademark registration for the Mark for the services SM Productions has applied for in categories 41 and 9 since 1997. The mark has remained unregistered since that time and to the best of my knowledge, no member of the band has used the mark in commerce since that time. Earlier this year, the applicant, SM Productions began using the mark in commerce in television and for phonorecords. In light of these uses, which are a continuation of my initial use of the mark in 1988, SM Productions has applied for the registration of the Trademark</p>
SIGNATURE SECTION	
SIGNATURE	/Richard Scott/
SIGNATORY NAME	Richard Scott
SIGNATORY POSITION	Partner
SIGNATORY DATE	10/07/2005
SIGNATURE	/Richard Scott/
SIGNATORY NAME	Richard Scott
SIGNATORY POSITION	Patner
SIGNATORY DATE	10/07/2005
FILING INFORMATION SECTION	

SUBMIT DATE	Fri Oct 07 12:43:24 EDT 2005
TEAS STAMP	USPTO/PA-6819212854-20051 007124324575008-78697224- 20052c1c5d014664ecf478bca 6206c0da-N-N-200510071242 46638029

FIG 6 Form (Rev. 10/01/03)
Official Copyright © 2005 USPTO

Preliminary Amendment

To the Commissioner for Trademarks:

Application serial no. **78697224** is amended as follows:

Additional Statements

My name is Richard Scott, and I am a partner in SM Productions, the applicant herein. I am making this additional statement in support of SM Production's application for the New Kids on the Block Trademark. In late 1987, Maurice Starr and I developed the concept and name "New Kids On The Block". We began to use the mark in commerce for a musical group (the "Group"); our first use in commerce was on or around January 1, 1988. In 1989, we assigned the ownership of the mark to our corporation, Big Step Productions, Inc. Big Step Productions, Inc. used the mark in commerce for several years, in many fields, including but not limited to, entertainment services, records, and clothing. Big Step Productions, Inc. entered into several licenses for the use of the "New Kids On The Block" mark; some of these licenses are still in effect. On or around April 1, 1992, Big Step Productions, Inc. assigned ownership of the mark to the members of the Group, The Group never registered such assignment with the Patent and Trademark Office (indeed the last registrant was Big Step Productions, Inc). The Group eventually stopped performing and providing services; all of the trademark registrations lapsed. There has been no trademark registration for the Mark for the services SM Productions has applied for in categories 41 and 9 since 1997. The mark has remained unregistered since that time and to the best of my knowledge, no member of the band has used the mark in commerce since that time. Earlier this year, the applicant, SM Productions began using the mark in commerce in television and for phonorecords. In light of these uses, which are a continuation of my initial use of the mark in 1988, SM Productions has applied for the registration of the Trademark

Declaration/Signature

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii). If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods or services listed in the application as of the application filing date. 37 C.F.R. Secs. 2.34(a)(1)(i). The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /Richard Scott/ Date: 10/07/2005
Signatory's Name: Richard Scott
Signatory's Position: Partner

Preliminary Amendment Signature

Signature: /Richard Scott/ Date: 10/07/2005

Signatory's Name: Richard Scott
Signatory's Position: Patner

Serial Number: 78697224
Internet Transmission Date: Fri Oct 07 12:43:24 EDT 2005
TEAS Stamp: USPTO/PA-6819212854-20051007124324575008
-78697224-20052c1c5d014664ecf478bca6206c
0da-N-N-20051007124246638029

EXHIBIT C

FAX

ATTN. Jaimison Roberts, Esq.

Fax Number 1212 448 0020

Phone Number 212 448 1800

FROM Richard Scott

Fax Number 818 996-6001

Phone Number 818 974-0446

SUBJECT Dick Scott and NKO B Trademark Registration

Number of Pages 2

Date 9/12/2005

MESSAGE

Jaimie,

I was totally shocked to learn that the New Kids Trademark and Registration had been abandoned. I picked it up to try and save it from unscroupulus hands.

Best

Dick

EXHIBIT D

LIVE THIS FRIDAY NIGHT
10:00 PM
AT THE PARAMOUNT

**NEW KIDS
ON THE
BLOCK**